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American Life Expectancy Tables, and Foreigners

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LIFE EXPECTANCY TABLES are recognized by the courts as admissible evidence,[1] and attorneys recognize them to be an effective means of presenting probable future life expectancy to a jury. The injured party's probable life expectancy is a major consideration in determining the amount of damages to be awarded to him for permanent injury.[2]

Courts have stated that life expectancy tables are not conclusive evidence of life expectancy,[3] and that their purpose is merely to guide a jury in determining the probable length of life of the injured party.[4] Decisions have consistently stated that factors such as age, health, physical condition, environment, and personal habits, will limit the effect of the tables.[5] If this is true, then it is reasonable to assume that in a case involving an individual with a "foreign living experience" United States life expectancy figures should not apply.

Obviously a life table cannot predict the real life expectancy of an individual.[6] It can predict average, probable, current life

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1 Dallas and Mavis Forwarding Co. v. Liddell, 234 Ind. 652, 130 N. E. 2d 459 (1955); Georgia Automatic Gas Co. v. Fowler, 77 Ga. 675, 49 S. E. 2d 550 (1948); LePage v. Theberge, 97 N. H. 375, 89 A. 2d 534 (1952); Hunt v. Wooten, 238 N. C. 42, 76 S. E. 2d 326 (1953); Culbertson v. Haynes, 127 F. Supp. 837 (N. D. Ind. 1955).

2 Oleck, Damages To Person and Property, 298-300 (1961 revision).
In order to determine the value for the impairment of earning capacity the jury must consider the length of time the injured party might have lived and worked, were it not for the wrongful act.
The jury may make a determination from the age, health, habits, hazards of employment and from other factors which affect the injured person's probable life expectancy, with the use of mortality tables as a guide.

3 Risley v. Lenwell, 129 Cal. App. 2d 608, 277 P. 2d 897 (1954); Harris v. Atlantic Greyhound Corp., 243 N. C. 346, 90 S. E. 2d 710 (1956); Ramage v. First Farmers and Merchants National Bank of Troy, 249 Ala. 240, 30 So. 2d 706 (1947).

4 Rosche v. McCoy, 397 Pa. 615, 156 A. 2d 307 (1959); See also Risley v. Lenwell, *supra* note 3.

5 Oleck, *op. cit. supra* note 2; Risley v. Lenwell, *supra* note 3; Harris v. Atlantic Greyhound Corp., *supra* note 3; Ramage v. First Farmers and Merchants National Bank of Troy, *supra* note 3.

6 Missouri-Kansas-Texas R. Co. of Texas v. Webb, 229 S. W. 2d 204 (Tex. Civ. App. 1950).

expectancy of a certain kind of population. For example, the 1960 Standard United States Government Life Expectancy Table shows that the average American at age 1 has a life expectancy of 70.6 years.[7] According to life expectancy tables published by the United Nations, the average Mexican life expectancy at age 1 is 44.43 years; for the Chinese the average is 63.21 years, while the Italian's average life expectancy is 68.54 years.[8] Life expectancy tables are available for almost every foreign country, and could be used as readily as United States tables for evidence.

To illustrate the effect these tables have on damage awards, consider the case of 30 Mexican migrant workers hired by a Texas ranch owner, and living on his ranch. He orders them transported from one area of his ranch to another. As a result of the driver's negligence, an accident occurs in which 15 of the workers are severely and permanently injured. Assume that eight of them are 20 years old and seven are 35 years old. Each has an annual earning capacity of $2,000.

If United States tables are applied, the basis for damages would be an additional 49.60 year life expectancy for those 20 years old and 35.76 for those 35. However, if the more relevant Mexican life expectancy tables are used, this expectancy would be only 35.76 additional years for the 20-year-old workers and 27.88 for those 35 years of age. The difference would be 13.84 years for each 20-year-old and 7.82 years for each 35-year-old. The total difference in life expectancy for all injured workers would be 165.46 years, and this certainly would be reflected in the damage awards.

If the theory implied from these examples were applied by American courts, it would mean, in the majority of cases, lower damage awards. There are, of course, a few countries which have life expectancy rates higher than those in the United States. For example, life expectancy in the United States at the age of 25 is 45.0 additional years; while in Canada it is 46.61 years. However, this difference is slight as compared to differences with most

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[7] U. S. Department of Health, Education and Welfare, U. S. Life Expectancy Tables (1960).

[8] 13 United Nations Demographic Yearbook 121-125 (1962).
Tables illustrated in the 1962 Yearbook are composed of data from the official life tables of the countries concerned. The official data is assembled by the Statistical Office of the United Nations from data transmitted monthly and annually by the national statistical services or other appropriate governmental offices of over 200 areas—supplemented when necessary by data from official publications.

other countries, which have lower life expectancies. A comparison of the life expectancy variations for males 25 and 50 years old in foreign countries and the United States will enable the reader to see the significant results more clearly.

COMPARISON OF LIFE EXPECTANCY BETWEEN THE UNITED STATES AND OTHER COUNTRIES[9]

Country	*Age 25*	*Age 50*
Brazil	— 10.4 yrs.*	— 4.80
East Germany	+ 1.37	+ .87
France	+ .20 (11 wks.)	+ .10 (5 wks.)
India	— 15.22	— 7.91
Israel	+ 4.14	+ 2.98
Italy	+ 1.39	+ 1.00
Japan	— .19 (10 wks.)	— .11 (5½ wks.)
Mexico	— 10.78	— 3.84
Philippines	— 2.88	— 1.29
Poland	+ .30 (15 wks.)	+ .30 (15 wks.)

[*Note: Minus signs indicate countries with life expectancies lower than that of the United States. Those with plus signs indicate countries with higher life expectancies. The figures represent the number of years difference from the U. S. rate. Figures indicated in parenthesis are only approximations.] [10]

A Case in Point

There is little precedent as to use of American versus foreign life expectancy tables. The question came to the fore in a 1963 Texas case, *Byrd v. Trevino-Bermea,*[11] when the court stated that the question was a novel one and that authority on or even near the point could not be found.

In that case, the trial court found the United States life tables to be admissible as evidence of the plaintiff's (a Mexican migrant worker) probable life expectancy. During trial, the defense attorney failed to introduce any contradicting evidence to show why these tables should not apply to the plaintiff. Seemingly, the issue of the defendant's liability was doubtful, because the defendant was pleading assumption of the risk.

However, on appeal, the defense took exception to the admission of United States standard life tables, on the ground that they applied only to United States citizens, while the plaintiff was a Mexican citizen. In addition, defense counsel requested the court to take judicial notice of the fact that life expectancy in Mexico is less than in the United States.

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[9] 13 United Nations Demographic Yearbook 121-125 (1962); U. S. Department of Health, Education and Welfare, U. S. Life Expectancy Tables (1960).

[10] See the table at the end of this article.

[11] 366 S. W. 2d 632 (Tex. Civ. App. 1963).

The appellate court stated that it could not take judicial notice of this fact because it had no knowledge of how long the average individual in Mexico lived. The court went on to say that even if it did know, it doubted whether it had the authority to take such judicial notice.[12]

Furthermore, the appellate court upheld the lower court's admission of the United States life expectancy tables, stating that standard mortality tables restricted to citizens living in the United States were admissible in actions for permanent injuries received by Mexican nationals in Texas accidents, and weight was for the jury. The court added that the plaintiff was working and living in Texas when he was injured. He was treated in Texas for his injuries and the evidence showed that but for the excellence of this treatment he most likely would have died.[13]

By including the above in its decision the court seemed to be groping for some reason or authority to show why United States tables were admissible. The court's argument is hard to follow. The decision on which a life expectancy table is considered to be admissible evidence by the court should not depend merely on where the accident took place. The decision overlooks the intent of preceding authority, which established that life expectancy tables, when admitted into evidence, were to be used as guides. In addition, the decision ignores the question whether the *place* is irrelevant and immaterial to the issues of the case.[14]

In the above cited Texas case, the court, by allowing the tables to be weighed by the jury as part of the evidence, ignored the fact that the United States table could serve only to confuse the jury because the table admittedly gave the life expectancy of the average American citizen and in no manner could indicate the life expectancy of a Mexican national. The court itself admitted that it did not know the life expectancy of a Mexican,

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[12] *Ibid.* The court observed that the Texas Statute does not allow judicial notice of foreign laws.

[13] Byrd v. Trevino-Bermea, *supra* note 11.

[14] Jones v. Terminal R.R. Ass'n. of St. Louis, 242 S. W. 473 (1951).
The admissibility of evidence of matters collateral to main issue in case is a question of relevancy, cogency, and probative force, and evidence of acts similar to those alleged is inadmissible when irrelevant to issues. Evidence of matters collateral to those in issue must be excluded when it would result in confusion of issues, unfair surprise or undue prejudice disproportionate to usefulness of such evidence.
McNeir v. Greer-Hale Chinchilla Ranch, 194 Va. 623, 74 S. E. 2d 165 (1953).
This decision states that the criterion of relevancy of evidence is whether or not it tends to cast any light upon the subject of inquiry.

yet it expected the jury to determine his life expectancy from U. S. statistics. Moreover, it has been consistently stated that factors such as health, environment, and habits will limit the effect of life expectancy tables.[15]

Logically, where the United States life table is offered into evidence and the foreign table is not, the court should deny the admissibility of the United States table rather than allow the jury to weigh it as part of the evidence. Yet, it is noteworthy that the courts often take judicial notice of United States life tables even if they are not mentioned by counsel before the court.[16] It is submitted that because the United States life expectancy statistics are irrelevant as to the life expectancy of a foreigner, the courts should deem it prejudicial to take notice of the rates indicated in the United States tables when considering them as evidence of foreign life expectancy, where the individual is in the United States only temporarily.

Factors Influencing Life Expectancy

The effects of living in a low income country, an underdeveloped area, a particular climate, the pace of everyday life, and the basic food staples consumed, all affect health and life expectancy. Studies are currently being conducted to determine more accurately the effects of these variables. Authorities have stated that occupation and socio-economic status are generally recognized to have an important influence on health.[17] In a study of mortality, occupation, and socio-economic status, it was shown that large mortality differentials between social classes are attributable more to socio-economic factors than to other direct circumstances.[18] In 1905, the United States Supreme Court in *The Saginaw and The Hamilton*[19] held that mortality tables prepared for life insurance purposes afford little aid in determining

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[15] Risley v. Lenwell, *supra* note 3; Harris v. Atlantic Greyhound Corp., *supra* note 3; Ramage v. First Farmers and Merchants National Bank of Troy, *supra* note 3.

[16] Ruehl v. Lidgerwood Rural Telephone Co., 23 N. D. 6, 135 N. W. 793 (1912).

[17] Moriyama and Guaralnick, Occupational and Social Class Differences in Morality, National Office of Vital Statistics, Department of Health, Education and Welfare, Reprint from Trends and Differentials in Morality (undated).

[18] Daric, Morality, Occupation and Socio-Economic Status, National Office of Vital Statistics, Vital Statistics-Special Reports, Number 10 (1951).

[19] 139 F. 906 (S. D. N. Y. 1905).

life expectancy in actions brought to recover damages for wrongful death, especially where the deceased was a colored person. When this case was decided the life expectancy tables used as evidence were based on the 1880 census. This decision indicated that the courts felt that the Negro's circumstances reflected a socio-economic background so different from that of a Caucasian that figures reflecting only the life expectancy of Caucasians should be disallowed as being an inconclusive indication of the Negro's probable life expectancy. The award in the lower court, based on Caucasian life expectancy, was deemed excessive and the appeal court adjusted the damages accordingly. When this decision is analyzed with respect to a foreign national's life expectancy, the same principle can be considered to be applicable.

A number of studies show a high mortality rate among Negroes. Some courts have held that a table giving only life expectancy rates of non-whites should be admitted into evidence when a non-white is injured, instead of one that gives the life expectancies based on combined white and non-white studies. An Oklahoma case held that a male defendant was entitled to use a table which gave the expectancy of white males instead of a table applying to the general populace.[20]

In *Rea v. Simowitz*[21] the court stated that the statutory table which fails to give the probable life expectancy of an infant under 10 years is irrelevant in ascertaining the life expectancy of an infant who died before reaching age 10. The court went on to say that

> . . . . for the jury to consider statutory mortality tables in ascertaining the infant's probable life expectancy at the time of her death, there must be precedent proof of age bringing the deceased clearly within the class of selected lives tabulated in such table.[22]

Such cases would suggest that if the table does not state a life expectancy relevant to and significant of the different backgrounds of foreign nationals, then it also would not be admissible evidence in court. A few courts have held that it is not error to deny admission of the tables altogether, because actually they are only slight evidence of the expectancy of the life of any particular person.[23] In some instances, courts have held that

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[20] O'Connor v. United States of America, 269 F. 2d 578 (2d Cir. 1959).

[21] 225 N. C. 575, 35 S. E. 2d 871 (1945).

[22] *Ibid.*

[23] Barone v. Forgette, 286 App. Div. 588, 146 N. Y. S. 2d 63 (1955).

when one relies upon mortality tables to show life expectancy, it then becomes necessary to show that the party belongs to a particular class.[24] However, in an action for the death of an Indian, the testimony of a life insurance agent regarding the average length of life for persons of decedent's age at the time of his death, according to standard life insurance companies' mortality tables, was admissible even though the lives of Indians are not considered in gathering statistics on which such tables are based.[25] This suggests that tables from a study that does not include a significant number of races and backgrounds characteristic of the individual who is claiming damages would be admissible.

In *McCaffrey v. Schwartz*[26] the court held that where life expectancy tables would tend to do more harm than good, as where the plaintiff did not enjoy good health before injury, the trial judge in exercising sound discretion may bar tables because they may tend to confuse or mislead the jury. Means other than statistical tables can be used to determine life expectancy in such situations. When a life expectancy table is admitted as evidence in a case where the particular statistics have little bearing on the issue (as compared with other influences), there is danger that the jury may place an exaggerated influence on the statistical value of the tables and regard them as absolute.[27] Thus, the tables would certainly be doing more harm than good.

Conclusion

It is the court's duty to see that the facts admitted into evidence do not tend to distort, mislead, or confuse the jury regarding the damages to be awarded. This the court cannot do if United States life expectancy tables are accepted as relevant to the life expectancy of a foreign national.[28] Therefore, the United States tables should be deemed inadmissible by the court in such cases. The court should then turn to the relevant foreign table as the only life expectancy table admissible in evidence.

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[24] Vicksburg R. Power and Mfg. Co. v. White et al., 82 Miss. 468, 34 So. 331 (1903).

[25] Babcock v. Grey, 165 Or. 398, 107 P. 2d 846 (1940).

[26] 285 Pa. 561, 132 A. 810 (1926).

[27] Immel, Actuarial Tables and Damage Awards, 19 Ohio St. L. J. 262 (1958).

[28] Commissioner of Internal Revenue v. Maresi, 156 F. 2d 929 (S. D. N. Y. 1946).
Such tables will not be competent when the circumstances at bar are too far afield from the experience which the tables record and on which their forecasts are made.

LIFE EXPECTANCY TABLES[29]

COUNTRY, YEAR, SEX		AGE IN YEARS						
		0	5	15	25	50	65	85
Austria								
Male	1949-51	61.91	62.70	53.26	44.22	22.31	12.01	3.68
Female	1949-51	66.97	66.89	57.34	47.99	25.42	13.59	4.06
Bolivia								
Male	1949-51	49.71	58.45	----	----	26.90	20.39*	9.46*
Female	1949-51	49.71	58.55	----	----	25.92	19.20*	8.73*
Brazil								
Male	1940-50	39.30	47.70	41.20	34.60	18.00	10.00	---
Female	1940-50	45.50	----	----	----	----	----	---
Canada								
Male	1955-57	67.61	65.45	55.86	46.61	24.04	13.36	4.27
Female	1955-57	72.92	70.35	60.64	50.97	27.65	15.60	4.97
Ceylon								
Male	1954	60.30	64.20	55.60	46.40	24.50	12.90	---
Female	1954	59.40	63.00	54.80	46.10	25.00	13.00	---
Chile								
Male	1952	49.84	55.64	46.90	38.74	20.36	11.36	4.45
Female	1952	53.89	59.95	51.23	43.23	23.58	13.39	4.97
China								
Male	1959-60	61.33	61.21	51.86	42.67	21.00	10.86	---
Female	1959-60	65.60	65.65	56.21	46.98	24.80	13.40	---
Denmark								
Male	1951-55	69.79	67.48	57.78	48.35	25.37	13.87	4.20
Female	1951-55	72.60	69.66	59.86	50.15	26.85	14.62	4.30
France								
Male	1960	67.20	64.40	54.70	45.20	22.90	12.50	---
Female	1960	73.80	70.60	60.80	51.10	27.90	15.60	---
Germany (Federal Republic of)								
Male	1959-60	66.69	64.71	55.05	45.83	23.16	12.36	3.60
Female	1959-60	71.94	69.51	59.74	50.06	26.74	14.34	3.95
Hungary								
Male	1958	65.14	65.14	55.52	----	23.64	----	---
Female	1958	69.36	68.52	58.80	49.60	26.08	----	---
India								
Male	1941-50	32.45	40.86	36.24	29.78	14.89	8.18	3.06
Female	1941-50	31.66	40.91	36.56	29.30	16.15	9.29	3.69
Ireland								
Male	1950-52	64.53	63.55	54.00	44.76	22.84	12.12	3.68
Female	1950-52	67.08	65.38	55.81	46.64	24.68	13.32	4.23
Israel (Jewish population)								
Male	1960	70.67	68.24	58.61	49.14	25.78	14.37	---
Female	1960	73.47	70.76	61.01	51.29	27.81	15.70	---
Italy								
Male	1954-57	65.75	65.27	55.74	46.39	23.80	12.91	3.65
Female	1954-57	70.02	69.15	59.52	49.89	26.67	14.35	4.10

[29] 13 United Nations Demographic Yearbook 638-647 (1962).

COUNTRY, YEAR, SEX		AGE IN YEARS						
		0	5	15	25	50	65	85
Japan								
Male	1959	65.21	63.45	53.99	44.81	22.69	11.91	3.71
Female	1959	69.88	67.78	58.21	44.81	26.24	14.37	4.52
Mexico								
Male		37.92	48.55	41.34	37.56	18.96	10.88	---
Female		39.79	50.90	43.75	40.07	19.99	10.92	---
Portugal								
Male	1957-58	59.80	63.50	54.10	44.80	22.90	12.10	3.60
Female	1957-58	65.00	68.30	58.90	49.40	26.60	14.20	4.10
Spain								
Male	1950	58.76	60.99	51.92	43.28	22.47	11.96	3.31
Female	1950	63.50	65.59	56.51	47.68	25.89	13.97	3.91
Sweden								
Male	1959	71.69	68.26	58.57	49.17	25.97	14.07	4.10
Female	1959	75.24	71.45	61.64	51.88	28.18	15.50	4.51
United States[30] (Total)								
Male	1960	66.6	63.9	54.2	49.6	22.8	12.8	4.5
Female	1960	73.1	70.1	60.4	55.5	27.6	15.8	5.0

* 60-80 years.

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[30] U. S. Department of Health, Education and Welfare, U. S. Life Expectancy Tables (1960).